

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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CAPANA SWISS ADVISORS AG,)
a Swiss corporation;)
AMERIMARK AUTOMOTIVE AG,)
a Swiss corporation,) Case No. 2:23-cv-00467
Plaintiffs,) Judge
vs.) Hon. Robert J. Shelby
RYMARK, INC., a Utah) Magistrate Judge
corporation; NICHOLAS) Hon. Cecilia M. Romero
THAYNE MARKOSIAN, an)
individual; JOHN)
KIRKLAND, an individual;)
and VICKY SMALL, an)
individual,)
Defendants.)
_____)

Video Recorded Deposition of
NICHOLAS THAYNE MARKOSIAN

Taken on August 8, 2024
At 9:46 a.m. to 6:24 p.m.
At PARSONS BEHLE & LATIMER
201 South Main Street
Suite 1800
Salt Lake City, Utah 84111

Reported by: Deirdre Rand, RPR, CSR, CCR

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1 Q. Okay. This is an email from Miron to you and
2 David Hesterman, dated May 9, 2016 copied to Daniel
3 Gysi. Subject: Share Exchange Agreement Final - High
4 Importance. Attachments: AMERIMARK SHARE EXCHANGE
5 final.docx. 02:00

6 Can you please read the email prior to the
7 German?

8 A. Sure. "Dear Nick: Attached, please find
9 Share Exchange Agreement for your signature. Please
10 sign in places indicated, scan and return." 02:00

11 Q. Okay. And then we can just look at the
12 attachment that has been produced by your counsel.

13 If I could direct your attention to page 10,
14 the page number, where it says "Executed by." And can
15 you read what's on this page? 02:01

16 A. Yes. It says, "Executed by," and then
17 "AmeriMark Automotive AG," and there's a dotted line and
18 underneath the dotted line it says, "Nicholas Markosian,
19 Founder." And then another line says, "Shareholder of
20 Emission & Power Solution Inc.," and then there's 02:01
21 another dotted line and underneath the dotted line is
22 "Nicholas Markosian" with a comma after it.

23 Q. Were you the founder of AmeriMark Automotive?

24 A. I don't know.

25 Q. Are you a shareholder of Emission & Power 02:02

1 Solutions Inc.?

2 A. I don't know.

3 Q. Okay. Next is Exhibit 38. Tab 41. Okay.

4 Exhibit 38.

5 (Exhibit No. 38 was marked for identification.) 02:02

6 Q. This is an email, it says, From:

7 donotreply@markosianauto.com on behalf of Markosian

8 Auto, To: Nick Markosian, nick@beenjerkedaround.com.

9 Date May 9, 2016. Subject: Scanned image from

10 MX-M503N. Attachments: Markosian 02:03

11 Auto_20160509_120807.pdf."

12 Earlier, you testified that the

13 donotreply@markosianauto.com could have been your office

14 scanner?

15 A. Uh-huh. 02:03

16 Q. So let's look at the attachment to this email.

17 Again, this is what your counsel produced. I'll first

18 direct your attention to page 1. It's 71391. And what

19 does the date say on this?

20 A. The top of the page says, "Dated: May," and 02:03

21 then there's a blank spot and the -- the number 9th is

22 written in, 2016.

23 Q. Same thing, page 3.

24 A. At the very top of that page it has the same

25 thing. It says, "Agreement dated May," and then there's 02:03

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1 a pen filled in, "9th, 2016."

2 Q. Okay. And now to page 10, 71400.

3 A. Page 10 like the -- the -- these --

4 Q. Correct.

5 A. Okay. 02:04

6 Q. Are those your signatures?

7 A. There is a one that looks like my signature
8 above "Nicholas Markosian, Founder" and then there's
9 another signature, but there is this weird line in the
10 middle of it. 02:04

11 Q. So --

12 A. That says, "Shareholder of Emission & Power
13 Solutions, Inc."

14 Q. So your testimony is that that is not your
15 signature underneath the Shareholder of Emission & Power 02:04
16 Solutions, Inc.?

17 A. No, it looks like my signature, but there's
18 this just strange line right in between where my
19 signature is and Shareholder of the Emission & Power
20 Solutions. 02:05

21 Q. Do you mean this line that's across all of the
22 pages?

23 A. Oh, yeah. Yeah.

24 Q. So just to confirm, are these your signatures
25 on page 10, 71400? 02:05

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1 A. They look like my signatures.

2 Q. Okay. And so going back to page 13 -- and so

3 again, this shows -- Schedule 3 says for your name,

4 1,300, number of shares issued in company; 18 million

5 number of consideration shares to be issued in the 02:06

6 purchaser on completion; and percentage shareholding in

7 the purchaser after share exchange in percentage, 100,

8 correct?

9 A. That's what it says, yes.

10 Q. Okay. Next is Exhibit 39. Tab 42. 02:06

11 (Exhibit No. 39 was marked for identification.)

12 Q. Okay. So this is an email. It says it's from

13 you, sent May 9, 2016, to Miron and Hesterman. Then it

14 says Subject: Executed share exchange agreement.

15 Attachments: Markosian 20160509_1020807.pdf. [As read.] 02:07

16 I would ask you to compare Exhibit 38 with 39

17 with regard to the attachments and let me know if those

18 attachments' language or descriptions are identical on

19 the -- on the first page, Mr. Markosian.

20 So, like, under "Attachments." 02:07

21 A. Oh, just under --

22 Q. Yeah.

23 A. -- "Attachments." All right.

24 Q. If you can just compare the word

25 "Attachments:" on the page 1 of 38 and 39 and let me 02:07

1 stopped talking to Dave?

2 A. No. No.

3 Q. Did you stop talking to both, like, around the
4 same time?

5 A. Yeah. 05:21

6 Q. And you think maybe that was, like, the winter
7 of 2019? Or...

8 A. It was probably before that.

9 Q. Fall?

10 MR. PEHRSON: Object; vague. 05:21

11 THE WITNESS: I doubt that I had a
12 conversation or an email with Miron after, say, the end
13 of 2018 would be my guess.

14 BY MS. DIAMOND:

15 Q. Oh, 2018 is what you, the last time you talked 05:21
16 to Miron, based on your recollection?

17 A. Somewhere in that range.

18 Q. Was it -- did you stop talking to Miron before
19 you stopped talking to Hesterman?

20 A. Yes. 05:21

21 Q. Okay. Next, Exhibit 71. 86.

22 (Exhibit No. 71 was marked for identification.)

23 Q. Okay. So let me know when you're ready.

24 A. I'm ready.

25 Q. All right. Do you know what Whitetree Capital 05:22

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1 Limited is?

2 A. I do now.

3 Q. And what is it?

4 A. I don't really know what it is. I just heard
5 the name. I should have -- I misspoke. I don't know 05:22
6 what it is. I've just heard the name.

7 Q. Okay.

8 A. Sorry.

9 Q. So this is an email -- okay, so we've been
10 going back and forth with Grantchester Equity. There's 05:22
11 a signature at the bottom of this email now. Does this
12 refresh your recollection of whether or not Miron is
13 Grantchester Equity?

14 MR. PEHRSON: Objection; ambiguous.

15 THE WITNESS: Based on that email signature, 05:22
16 he -- it's his email address.

17 BY MS. DIAMOND:

18 Q. Okay. So Miron is emailing Vicky with a copy
19 to you and Hesterman. This is February 19, 2020.

20 A. Uh-huh. 05:23

21 Q. Now, this is the time when you had said that
22 he had disappeared and you weren't really in contact
23 anymore. Is that --

24 A. Now...

25 MR. PEHRSON: Objection; vague. 05:23

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